

F I L E D
Clerk
District Court

MAR 22 2012

For The Northern Mariana Islands
By _____
(Deputy Clerk)IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JOHN H. DAVIS, JR.,

Plaintiff,

v.

COMMONWEALTH ELECTION
COMMISSION; FRANCES M. SABLON,
Chairperson of Commonwealth Election
Commission; ROBERT A. GUERRERO,
Executive Director of Commonwealth
Election Commission; BENIGNO R.
FITIAL, CNMI Governor; ELICEO D.
CABRERA, Speaker of the House of
Representatives, 17th CNMI Legislature; and
PAUL A. MANGLONA, President of the
Senate, 17th CNMI Legislature,Defendants.¹

Case No.: 1-12-CV-00001

DECISION AND ORDER
GRANTING IN PART
DEFENDANTS' MOTION TO DISMISS

Before the Court is Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Motion to Dismiss," Dkt. No. 10). The Court has also reviewed Defendants' supporting memorandum ("Memorandum," Dkt. No. 11), Plaintiff's opposition brief ("Opposition," Dkt. No. 16), and Defendants' reply brief ("Reply," Dkt. No. 19). After oral argument by the parties on March 22, 2012, the Court granted in part the Motion to Dismiss without prejudice and gave Plaintiff fourteen days in which to file a second amended complaint. This written Decision explains the reasons for the Court's Order.

¹ Defendants Cabrera and Manglona have been voluntarily dismissed from the action. (See Plaintiff's Notice of Voluntary Dismissal, Dkt. No. 9.)

1 **I. Background**

2 On January 3, 2012, Plaintiff John H. Davis, Jr. (“Davis”) filed an Amended Complaint
 3 (Dkt. No. 2) asking the Court to enjoin Defendants from “denying United States citizens who are
 4 not of Northern Marianas descent the right to vote on any issue regarding Article XII of the
 5 Commonwealth Constitution or on any other issue and [to declare] Article XVIII § 5(c) of the
 6 Commonwealth Constitution and Public Law 17-40 to be null and void in violation of the 14th
 7 and 15th Amendments of the United States Constitution.” (Am. Compl. ¶ 1.) Davis asserts that
 8 the Court has jurisdiction over the action pursuant to § 402(a) of the Covenant to Establish a
 9 Commonwealth of the Northern Mariana Islands in Political Union with the United States of
 10 America (“Covenant,” codified at 48 U.S.C. § 1801 note), 28 U.S.C. § 1331 (federal question),
 11 and 28 U.S.C. §§ 2201–2202 (Declaratory Judgment Act). (Am. Compl. ¶ 2.) On January 27,
 12 2012, Defendants moved to dismiss the case for failure to state a claim upon which relief can be
 13 granted. They assert that because Davis has not pled a right of action under 42 U.S.C. § 1983 to
 14 redress the alleged violation of his civil rights under the U.S. Constitution, he has not stated a
 15 cognizable legal theory for relief. (Mem. at 4–5.) Furthermore, they ask the Court to dismiss
 16 with prejudice and without leave to amend as to Defendant Commonwealth Election
 17 Commission (“CEC”) on grounds that the CEC is not a “person” subject to suit under § 1983.
 18 (Mem. at 5.)

19 Davis responded, on February 22, 2012, that “this is not a § 1983 case. This is an action
 20 for declaratory judgment and injunctive relief seeking to prevent the unconstitutional deprivation
 21 of plaintiff’s right to vote.” (Dkt. No. 16, Opp. at 3.) At the March 22 hearing, the Court invited
 22 Davis to reconsider his position, and Davis declined.

23
 24 **II. Standards**

25 A complaint may be dismissed for “failure to state a claim upon which relief can be
 26 granted.” Fed. R. Civ. P. 12(b)(6). A pleading that states a claim for relief must contain “a short
 27 and plain statement of *the grounds for the court’s jurisdiction*” and “a short and plain statement
 28 of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(1),(2) (emphasis

1 added.) Although a complaint does not need “detailed factual allegations, . . . a plaintiff’s
 2 obligation to provide the grounds of his entitlement to relief requires more than labels and
 3 conclusions . . .” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation and internal
 4 quotation marks omitted). A Rule 12(b)(6) dismissal may be based on “lack of a cognizable
 5 legal theory or the absence of sufficient facts alleged.” *UMG Recordings, Inc. v. Shelter Capital*
 6 *Partners, LLC*, 2011 U.S. App. LEXIS 25168 (9th Cir. 2011) (quoting *Balistreri v. Pacifica*
 7 *Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)).

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III. Discussion

10 It is expressly the province of Congress to “enforce . . . by appropriate legislation” the
 11 provisions of the Fourteenth and Fifteenth Amendments. U.S. Const. amend. XIV, § 5; amend.
 12 XV, § 2.² Any action for relief from violation of rights guaranteed by those amendments must,
 13 therefore, be grounded in federal statutes. For example, 42 U.S.C. § 1983, originally § 1 of the
 14 Civil Rights Act of 1871, was enacted “for the express purpose of ‘enforc[ing] the Provisions of
 15 the Fourteenth Amendment.’” *Mitchum v. Foster*, 407 U.S. 225, 238 (1972) (citing 17 Stat. 13).

16 The statutes on which Davis relies in the Amended Complaint do not provide such a
 17 cause of action. They grant the district court jurisdiction to entertain actions arising under the
 18 Constitution (“federal question” jurisdiction, 28 U.S.C. § 1331) and to declare the rights of any
 19 interested party “upon the filing of an appropriate pleading” (28 U.S.C. § 2201). In other words,
 20 if a plaintiff has a right of action under United States law, then a district court may fashion
 21 declaratory relief separate from or in addition to any other remedy that may be available. Cf.
 22 *Countrywide Home Loans, Inc. v. Mortg. Guar. Ins. Corp.*, 642 F.3d 849, 853 (9th Cir. 2011)
 23 (explaining that Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, does not confer
 24 jurisdiction). Davis must look elsewhere than these statutes to establish subject matter
 25 jurisdiction.

26 Courts have sometimes held that a failure to reference § 1983 or other statutory or
 27

28 ² The Fifteenth Amendment and § 1 of the Fourteenth Amendment are applicable within the Commonwealth of the Northern Mariana Islands. Covenant, § 501(a).

1 common-law sources of civil rights action is “not fatal . . . at the pleading stage.” *Smith v. Mich.*
 2 *Dep’t of Corr.*, 765 F. Supp. 2d 973, 981 (E.D. Mich. 2011); *see also Monroe v. Mueller*, 2010
 3 U.S. Dist. LEXIS 121027 (E.D. Mo. Nov. 16, 2010) (liberally construing complaint as having
 4 been brought under § 1983 and *Bivens* (U.S. 1971)). Davis, however, has staunchly maintained
 5 that “this is not a § 1983 case.” (Opp. at 3.) The Court will not force a party to proceed with a
 6 law suit on a cause of action which he has, thus far, openly disavowed. The Amended Complaint
 7 must, therefore, be dismissed.

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9 **IV. Conclusion**

10 For the foregoing reasons, the Court hereby GRANTS Defendants’ Motion to Dismiss
 11 without prejudice to Davis, and GRANTS Davis **fourteen days** from the date of this Order in
 12 which to file a second amended complaint redressing the aforementioned deficiencies. Because
 13 the Court has declined to construe the Amended Complaint as a § 1983 action, the Court does
 14 not reach Defendants’ request to dismiss CEC from the case. If Davis files a second amended
 15 complaint, Defendants may respond within the time provided by Fed. R. Civ. P. 15(a)(3). The
 16 Court notes that the parties have also filed and fully briefed cross motions for summary
 17 judgment. (See Dkt. Nos. 14, 20.) Because Defendants’ Motion to Dismiss has in pertinent part
 18 been granted, the summary judgment motions are moot, and the Court does not rule on their
 19 merits. If Davis re-pleads the complaint properly, the parties may re-notice the summary
 20 judgment motions for a hearing. This Decision and Order dismissing the case without prejudice
 21 for failure to state a claim does not reach the merits of Defendants’ argument, first raised in
 22 opposition to Davis’s summary judgment motion (see Dkt. No. 18), that the Court lacks
 23 jurisdiction because Davis’s claims are not ripe.

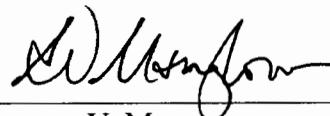
24 IT IS SO ORDERED this 22nd day of March, 2012.

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RAMONA V. MANGLONA
Chief Judge